

1-11-2018

State v. Tharpe Appellant's Brief Dckt. 45144

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Tharpe Appellant's Brief Dckt. 45144" (2018). *Not Reported*. 4053.
https://digitalcommons.law.uidaho.edu/not_reported/4053

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45144
)	
v.)	BANNOCK COUNTY NO. CR 2014-11701
)	
ERIC PAUL THARPE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Eric Paul Tharpe appeals from the district court's order revoking his probation, arguing that the decision to revoke his probation represents an abuse of the district court's discretion.

Statement of the Facts & Course of Proceedings

Mr. Tharpe has struggled with methamphetamine addiction for years. (PSI, pp.57-58.) In 2015, he pled guilty to possessing methamphetamine and the district court sentenced him to five years, with two years fixed, retaining jurisdiction. (R., pp.51, 136.) Following his exemplary performance on the rider, the district court suspended Mr. Tharpe's sentence and placed him on probation. (R., p.145.) Mr. Tharpe soon relapsed into drug use, however, and admitted violating

his probation by testing positive for methamphetamine use, committing two misdemeanor crimes, and associating with his fiancé after being directed to have no contact with her. (R., p.158; Tr., p.13, L.5 – p.14, L.6.) Citing to his work and sobriety at the jail following his arrest, Mr. Tharpe asked the district court for another chance at probation so that he could participate in a treatment program and work on his recovery. (Tr., p.24, L.24 – p.25, L.4.) The State and the probation officer both asked for revocation. (Tr., p.17, Ls.6-8; p.23, L.3.) After remarking that its choice between prison and probation was a difficult one (Tr., p.27, Ls.15-18), the district court decided to revoke Mr. Tharpe’s probation and execute his previously-suspended sentence (R., p.168; Tr., p.20, Ls.7-8).¹ Mr. Tharpe filed a timely Notice of Appeal. (R., p.172)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Tharpe’s probation?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Tharpe’s Probation

A. Introduction

In light of Mr. Tharpe’s addiction and his potential for overcoming that addiction, along with the positive strides he has made in recent years, the district court’s decision to revoke his probation was unreasonable, representing an abuse of discretion. Mr. Tharpe asserts that instead

¹ Mr. Tharpe additionally filed an Idaho Criminal Rule 36 motion, asking the court to revisit its computations of his credit for time served. (R., p.183; *See also* Letter from Mr. Tharpe, filed September 6, 2017, a copy of which is being augmented into the appellate record via Appellant’s Motion To Augment, filed contemporaneously with this Appellant’s Brief.) The district court denied the motion. (R., p.188.) Mr. Tharpe does not challenge the district court’s denial of his motion on appeal.

of revoking his probation, the district court should have reinstated it and placed him in a structured program to allow for treatment and facilitate his recovery.

B. Standard Of Review

The decision whether to revoke a defendant's probation for a violation is within the discretion of the district court, and, accordingly, this Court reviews a district court's decision to revoke probation under an abuse of discretion standard. *State v. Garner*, 161 Idaho 708, 710 (2017). In determining whether the district court abused its discretion, this Court considers: (1) whether the trial court understood the issue as discretionary; (2) whether the trial court acted within its discretionary scope and under applicable legal standards; and (3) whether the trial court exercised reason. *Id.*

C. The District Court Acted Unreasonably When It Revoked Mr. Tharpe's Probation Instead Of Reinstating It

The district court's choice to revoke probation instead of reinstating it was unreasonable. Mr. Tharpe's past accomplishments in structured programs demonstrate that he is committed to his recovery and that he holds potential for success. His 2015 rider performance was commendable: Mr. Tharpe completed the New Direction group, Anger Management, and his Pre-Release programs. (PSI, p.96.) As described by his program facilitator, Mr. Tharpe was an "active participant in the process, willing to provide and accept feedback" and he "presented himself as a leader who went above and beyond what was expected." (PSI, p.96.) He graduated in good standing in all of his classes, showing remarkable effort to learn about his negative behaviors and he started to "prove to himself and others he is not who he used to be." (PSI, p.94.) Summarizing the basis for recommending probation in 2015, the IDOC's notice states:

Through his participation in the New Direction rider program, [Mr. Tharpe] has demonstrated the ability to gain insight into, and has received interventions to

modify, [his] criminal behavior. He also appears amenable to treatment in the community. He has demonstrated an overall ability to follow the rules of a structural setting.

(PSI, p.105.) His strong performance in 2015 demonstrates Mr. Tharpe's capacity to change and for recovery, especially when that performance is contrasted with his former attitude, in 2011, when he had rejected feedback from others and resisted taking responsibility for his actions. (PSI, p.6.)

During his subsequent probation, Mr. Tharpe participated at the local counselling center four days every week. (Tr., p.17, Ls.19-23.) But he lacked the necessary structure, and he needed more help integrating back into the community. (Tr., p.18, Ls.5-20.) For example, the room he had rented at the halfway house was unavailable when he was released, and with nowhere else to go, Mr. Tharpe returned to his fiancé, with whom he shares a child; although he behaved responsibly by helping pay the bills, he also returned to drug use. (Tr., p.17, L.24 – p.18, L.12.)

Mr. Tharpe advised the district court that he now has a stable place to live in the community, either with his grandfather in Utah, or with other family members in Idaho. (Tr., p.15, L.23 – p.16, L.3.) He also pointed out to the court that he'd remained sober for the past six to seven months since his arrest, despite his easy access to drugs at the jail, and that his work performance in the jail's kitchen had been exemplary. (Tr., p.14, L.21 – p.15, L.12.) His probation officer additionally informed the court that the jail was "very happy with him as a trustee ... he's doing awesome." (Tr., p.22, Ls.10-11.)

But Mr. Tharpe knows that he needs professional help to stay off of the drugs that plainly have hold of him. (Tr., p.15, Ls.20-22.) He had tried getting into Wood Court, but because of his high LSI score of 45, and because of the district court's past experience with high-score defendants who did not succeed in the Wood Court program, the district court was unwilling to give

Mr. Tharpe that chance. (Tr., p.26, L.16 – p.27, L.15.) Mr. Tharpe submits that he would be able to succeed where others had not. Given his high motivation to recover and his demonstrated potential to succeed in such a structure program, the district court should not have denied him that opportunity. Finally, but importantly, Mr. Tharpe believes in himself. He told the court, “I know I can do this.” (Tr., p.23, Ls. 14-15.)

Given the foregoing circumstances, the district court’s decision to revoke Mr. Tharpe’s probation and execute his sentence was unreasonable, and represents an abuse of discretion.

CONCLUSION

Mr. Tharpe respectfully requests that this Court vacate the order revoking his probation, and remand his case to the district court with instructions that it reinstate Mr. Tharpe’s probation.

DATED this 11th day of January, 2018.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of January, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ERIC PAUL THARPE
INMATE #69456
SICI
PO BOX 8509
BOISE ID 83707

STEPHEN S DUNN
DISTRICT COURT JUDGE
E-MAILED BRIEF

ROBERT O ELDREDGE
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas